

REMARKS

Amendments to the Claims

Claim 1 has been amended without prejudice to recite a preferred embodiment of applicants invention that is more clearly distinguished over the prior art, namely wet-skin treatment compositions that have less than 1% anionic surfactant.

New dependent claims 19-21 have been introduced which recite additional preferred embodiments of applicants' invention.

Support for the amended claims is provided by numerous exemplary compositions, namely those set forth in Examples 1A-B (0.92%) and 1C-D (0%), 3 (0%), 5-10, and 8H (surfactant free).

Present Invention

Applicants' invention is directed to a process to make a separate wet-skin-treatment-composition that is used in the shower after the skin has been cleaned with a conventional cleanser and is still wet. The composition, which is the form of an oil-in-water emulsion, is applied to the skin and rinsed off. The composition is designed to deposit triglyceride oils on the skin which are retained on the skin after rinsing at a sufficient level to provide a long-lasting moisturizing effect without leaving a greasy feel.

Applicants found that to achieve these benefits, the compositions should be extremely mild to the skin and should not have any harsh surfactants present, said surfactants having the potential to be retained and irritate the skin (page 17, line 22-24). Further, applicants found that, to achieve these benefits, the compositions should essentially be non-foaming (page 17, line 5-6). These requirements (i.e., non-harsh, non-foaming) limited the types and amounts of surfactants that could be employed.

Finally, applicant's discovered a process to make these emulsions which proved difficult to prepare because of the networks formed within the oil phase and the limited amount of surfactant that could be utilized. Applicants' found that simply mixing the separate structured oil phase and aqueous phase together as is conventionally practiced for oil-in-water emulsions led to large "lumps" of structured oil. Applicants' surprisingly found that the lumps could be converted to uniform emulsified particles by passing the crude dispersion through a screen of appropriate mesh. This process has proved convenient in preparing the emulsions on large scale without the need for additional and expensive equipment.

Claim Rejections – 35 USC § 103

In the Office Action mailed May 16, 2005, claims 1,4-7,9-13, and 15-17 were rejected as being unpatentable over Glenn, Jr. et al (WO 9625144 equivalent to US 6,080,708).

Glenn Jr. et al is directed to a lathering, skin cleansing composition and Glenn Jr. teaches two evaluation methods to ensure the compositions have adequate lather. To achieve adequate lather Glenn Jr. et al teaches that the aqueous phase should contain an anionic surfactant at a level of from about 2 to 20 parts (%) (column 7, line 24).

Glenn Jr. et al further teaches that "nonionic synthetic surfactant can not serve as the sole surfactant in this product" (column 7, line 34-35). In fact all the exemplary compositions disclosed by Glenn Jr. et al have at least about 10% by weight of an anionic surfactant.

Glenn Jr. et al is silent about any limitations on the mildness of the composition or indeed any method to assess mildness.

Finally, Glenn Jr. et al is silent about any process or equipment used to break up lumps let alone the passage of the crude lumpy dispersion through a screen to induce emulsification. In fact, Glenn Jr. et al teaches that simply mixing the two phases at slow speed for 2 minutes is adequate (column 17, line 58-64).

In contrast, applicants compositions are essentially non-foaming (page 18, lines 4-5), and have a mildness close to pure water (page 18, line 4). Well-established tests to achieve both target properties are disclosed. Applicants amended claim 1 requires that the level of anionic surfactant be less than 1%, and that the process to make applicants' composition includes the step of passing a dispersion of lumps through a screen.

The Office Action points out that Glenn Jr. et al does not expressly disclose the particular retention efficiency index, foam volume and irritation potential as claimed by applicants. However, the Office Action asserts that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to obtain or determine the particular retention efficiency index, foam volume and irritation index in the known process of Glenn, Jr. Applicants respectfully traverse this rejection for the reasons set forth below.

Firstly, there would have been no motivation to reduce the anionic surfactant content to less than 1% because the lathering and cleansing performance of the Glenn Jr. et al composition would have been compromised. More importantly, Glenn Jr. et al would have provided a distinct disincentive to such a modification because the references teaches that the anionic surfactant is present at a level between about 2 and 20% and the examples would have suggested that the level of anionic surfactant should be at least 10%. To amplify this point, applicants note that many of their exemplary compositions contain only a low level of nonionic surfactant as the sole surfactant: such compositions would have been strongly discouraged by the teaching of Glenn Jr. et al as noted above.

Finally, even in the very unlikely event that a person of ordinary skill in the art would have tried to make the low-surfactant compositions discovered by applicants, the skilled person would not have made an acceptable composition following the teaching of Glenn Jr. et al. This is because structured oil phases are difficult to emulsify in such low-surfactant compositions. Thus, a person of ordinary skill in the art would have likely ended up with an unstable coarse dispersion (a mess!) applying the teachings of Glenn Jr. et al (stirring at slow speed) to a low-surfactant composition. Thus, since Glenn Jr. et al would have provided no guidance how to solve this problem, a person of ordinary skill in the art would have likely abandoned the low-surfactant approach because of a low expectation of success.

Applicants' respectfully submit that independent claims 19-21 are even more removed from Glenn Jr. et al because they place even more restrictions on the surfactant content.

In view of the current amendments and the above remarks, applicants respectfully request that the 103 (a) rejection over Glenn Jr. et al (WO 9625144 equivalent to US 6,080,708) be reconsidered and withdrawn and that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,


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